
Minutes

Board of Natural Resources “Special” Meeting

March 21, 2006
Natural Resources Building, Olympia, Washington

BOARD MEMBERS PRESENT VIA CONFERENCE PHONE

Terry Bergeson, Superintendent of Public Instruction
Ted Anderson, Commissioner, Skagit County
Bruce Bare, Dean, University of Washington, College of Forest Resources
Daniel J Bernardo, Dean, Washington State University, College of Agricultural, Human, and Natural Resource Sciences

BOARD MEMBERS PRESENT IN THE NRB

Bob Nichols for Governor Christine Gregoire
Doug Sutherland, Commissioner of Public Lands

CALL TO ORDER

Chair Sutherland called the meeting to order at 11:05 a.m. on, Tuesday March 21, 2006, in Room 172 of the Natural Resources Building.

REVIEW AND CONSIDER SUSTAINABLE HARVEST CALCULATION SETTLEMENT AGREEMENT

Bruce Mackey gave a brief introduction stating that the settlement agreement resolves Washington Environmental Council, et al v. Sutherland, et al, litigation brought in King County Superior Court in October 2004. Prior to the Judge’s opinion being reduced to a final judgment, the parties agreed to enter into settlement discussions. Those negotiations occurred from November 2005 through March 2006. The parties believe they have reached an agreement that meets the core objectives of all parties. The agreement lays out a number of important tasks, which the parties will work cooperatively to accomplish. The parties to the agreement are as follows:

Conservation groups ~ Washington Environmental Council, National Audubon Society, Conservation Northwest, Olympic Forest Coalition

State Government ~ Commissioner of Public Lands Doug Sutherland, the Board of Natural Resources (BNR), the Department of Natural Resources (DNR)

Interveners ~ American Forest Resource Council; Pacific, Skamania, Snohomish, and Skagit Counties; City of Forks; Quillayute Valley, Toutle Lake, Willapa Valley and Castle Rock School Districts; and Willapa Harbor Hospital.

Mr. Partridge highlighted the key elements of the executive summary and talked about the process of the negotiations. He stated that all the parties worked hard to get to the level of agreement reflected in the document. He reviewed eight sections in the agreement:

- 1) Balance of Habitat Protection and Enhancement and Revenue Producing Activities in Northern Spotted Owl Habitat in three areas; Nesting, Roosting and Foraging (NRF) Dispersal designated

areas in the Habitat Conservation Plan (HCP), The Olympic Experimental State Forest (OESF), and Owl Areas.

2) Innovative Silviculture

3 & 4) Other DNR Land Management and Implementation Activities

5) Resolution of legal Issues now and in the future

6) Seeking 30% for the Resource Management Cost Account Approval from the Legislature

7) Communication and Dispute Resolution

8) Term of the agreement (the term of the agreement is from now until 2014, or until the BNR adopts a Sustainable Harvest Level that extends beyond 2014, whichever is later)

Mr. Partridge discussed the bulk of the agreement, which relates to the Northern Spotted Owl Habitat. He detailed seven provisions of the agreement: 1) No timber harvest in the highest quality habitat in these areas (Old Growth, the best habitat on a trajectory towards 10-15% target for older forests) 2) Lower quality habitat areas would be subject to enhancement activities (thinnings, partial harvests) 3) In all these areas, next best stands to reach the 50% target are identified, and in those next best stands habitat enhancement similar to the dispersal areas can occur that won't delay the stands reaching the habitat targets 4) DNR would actively prioritize and carry out enhancement activities as the Department has committed to the Board 5) DNR would target the enhancement activities where it would do the most good for habitat by using science based criteria, which was negotiated among the parties 6) Outside the 50% necessary to meet the HCP commitments the full range of management would be allowed consistent with the HCP and Board direction 7) In NRF and dispersal areas all the previous owl circles would be lifted as intended by resolution 1134.

Mr. Partridge continued saying that the next section of the agreement deals with Northern Spotted Owl Habitat in the Olympic Experimental State Forest. He explained that this was a major focus for all the parties and a field trip took place in the OESF. The forest is 264,000 acres on the west end of the peninsula. In the HCP it's the subject of a special conservation strategy that in contrast to many areas of environmental management uses an un-zoned approach where all the goals are sought across the entire area. He listed some provisions of the agreement:

- No harvesting of the highest quality Northern Spotted Owl Habitat that's referred to as older forests in the OESF
- The overall management plan for the OESF landscapes would be done expeditiously next in line after the South Puget Sound Region Landscape Plan (the parties to the agreement will be invited to participate in that planning)
- DNR intends to move from the age based surrogate for habitat in the forest inventory to a more accurate structure based inventory method
- Within the structurally defined habitat that is not old forest, only enhancement activities would be allowed before the landscape plan is complete. Those activities would produce revenue and accelerate the development of habitat.
- The enhancement to meet the target in the OESF for older forests and other habitat would be done on a one to one basis with regeneration harvests
- Harvest would occur at planned levels in the non-habitat areas even if they were older than 50 years. Areas younger than 50 years would be subject to the guidance in the OESF Conservation Strategy of the HCP and the landscape plan when it's produced. Those areas are otherwise available for the full range of trust management activities.

Next he covered the provisions of the agreement related to "owl areas", which are the former regulatory circles that existed outside the NRF and Dispersal areas outside the OESF, that were reinstated by the Judge's decision and not addressed in the conservation measures covered previously. In those other owl areas there would be no harvest of the highest quality Northern Spotted Owl Habitat which is a relatively

small amount of habitat in those areas. The areas that have the larger amount of habitat were incorporated into the HCP as owl emphasis areas. In lower quality habitat, thinning activities for trust revenue are allowed, but not allowed to drop those areas below their habitat thresholds. If a nesting pair of spotted owls is known to have existed within the past year the thinning would be minimized; there are only two of those sites at this time.

Mr. Partridge discussed innovative silviculture stating that this topic was very important to the plaintiffs and is a key feature of the HCP, Resolution 1134, and the Department's implementation. He said there would be two provisions related to innovative silviculture in the OESF: 1) Scientifically designed demonstration projects built into the research and implementation activities on the OESF 2) 100 year modeling exercise across the OESF to examine a range of alternative silviculture techniques including Dr. Carey's biodiversity pathways. Mr. Partridge stated that this exercise would be jointly designed among the parties, peer reviewed, and the results published in a way designed to enhance the public availability of information.

Mr. Partridge moved onto sections three and four of the agreement.

- The 50/25 rule and the leave tree rule would be lifted as intended by the Board
- The riparian forest restoration strategy would be implemented immediately
- The PSF would be brought to the Board for final approval
- Old growth in Eastern Washington would be analyzed
- DNR would continue with the Sustainable Harvest implementation planning which integrates the PSF, SFI certification, and this agreement (OESF is next in line for this planning)
- DNR would be preparing timber harvest schedules and consistent with this agreement the Department would engage in more intensive information sharing with the parties to the agreement and provide greater opportunities for the parties to contribute in the planning activities
- DNR would re-run the sustainable forestry model and bring the results back to the Board for decision prior to the end of 2007

Mr. Partridge moved onto section five of the agreement, which covers legal resolutions. He highlighted two main points: 1) Within five days of the Commissioner's signature, which would finalize the agreement, the parties would go to Judge Armstrong and seek dismissal of the lawsuit; there would not be any change in the final EIS for the sustainable harvest. 2) The plaintiffs have agreed not to legally challenge the Department in several specified areas including: new harvest level, riparian forest restoration strategy or the SEPA documentation, there would be no challenge to the PSF EIS, there would be no challenge of timber sales complying with this agreement on the basis of Northern Spotted owl Provisions. In section six of the agreement the plaintiffs agreed to actively support the legislative reauthorization of the RMCA at 30% of gross revenues. Mr. Partridge moved on to section seven and explained that the parties agreed to increase communication and use a dispute resolution process. He read a few clauses from the agreement, "The parties intend to build a relationship of collaboration and trust during the term of this agreement". "During the term of this agreement the parties will commit themselves to open, truthful, serious, and constructive dialog when meeting with each other in private and engaging in public communications" He said the agreement goes on to say that DNR and the other parties to this agreement recognize it is in their best interest to resolve issues and concerns outside of the courts whenever possible. Cooperation between DNR and the other parties is emphasized and the parties in good faith will pursue reasonable discussions before pursuing judicial resolution. In these discussions DNR and the other parties will seek mutually beneficial outcomes" He explained that this language was discussed at length and bargained over and agreed to by the parties. The two main provisions of this section is that there will be annual meetings among the parties to discuss implementation of the agreement and to go over all of the plans related to the agreement and attempt to resolve any disagreements that might arise at that time. There is a structured dispute resolution process laid out in the agreement, to be used where

needed, prior to taking any disputes to external parties including the courts or prior to having DNR implement disputed activities on the ground.

Mr. Anderson asked if the Board's definition of Old Growth used in the Policy for Sustainable Forests would be used in this agreement.

Mr. Mackey explained that the Board's definition was based on a group of professionals that used an indexing system that identified old growth on the Westside of the state. He said the definition is not the same but it's clearly mapped and would have some overlap.

Mr. Partridge added that this agreement is not about old growth but is about Spotted Owl Habitat. All the terms of the agreement are grounded in that objective.

Mr. Anderson said he understood that but it still ties back to old growth repeatedly. He wanted to be sure about the definition of old growth in relation to limiting harvest.

Mr. Bare referenced page 6 of the agreement and the term "old forest" and he wanted to know what the definition was. He wanted to know what "old forest stands" meant relative to the proposed Policy for Sustainable Forests.

Mr. Mackey said the old forest is a target for the OESF and includes more structure than what is in the Old Growth definition yet they are similar in acreage.

Mr. Bare asked if it was fair to assume that the definition of "old forest" is consistent with that in the Habitat Conservation Plan.

Mr. Mackey said that was correct.

Mr. Mackey ended by stating that lawsuits are expensive and time-consuming. He explained that the parties entered into the negotiations with a set of principles that are restated in the settlement; essentially the same set the Board used in developing the preferred alternative. He said it could have taken two to four years to resolve these issues. In terms of magnitude the trusts are substantially better off with settlement, than without it, both in terms of volume of timber available and potential revenue over the next planning decade. He said that the settlement requires some operational changes to avoid any net loss in some designated habitat in the short run but in reality it impacts less than 1% of the land base. Even with the changes DNR will be able to implement the HCP across the entire landscape and create habitat and revenue for the trust beneficiaries as the Board directed in resolution #1134. He talked about future communication and relationships with all the parties saying that it's crucial for the success of the agency. Mr. Mackey said under this dispute resolution process issues would be addressed up front and resolved in a timely manner. He felt that if these commitments were kept than lawsuits should be a last resort.

MOTION: Terry Bergeson moved to approve Chair Sutherland's signature on the settlement agreement on behalf of the Board of Natural Resources and the Department of Natural Resources.

SECOND: Bruce Bare seconded.

ACTION: Motion passed unanimously.

Mr. Bare congratulated the plaintiffs and the defendants for endorsing active management and stated the following: “Today, I am pleased to endorse a Settlement Agreement to a legal challenge to Board of Natural Resources' Resolution 1134. Adopted in September 2004, the Resolution established a sustainable harvest level for western Washington state forest trust lands for FY 2005-2014.

The [Agreement](#) represents an appropriate tactical adjustment by the Board and the Department in response to emerging scientific information on the status of the northern spotted owl in western Washington. It is a modest and temporary expansion of additional protections for the owl that makes good economic and ecological sense. In short, it is a win for the owl and a win for the trust beneficiaries.

Of central importance is that all of the Board's strategic trust land management principles adopted in [Resolution 1134](#) remain in force. Further, I understand that under the Agreement, future timber harvest levels, along with their associated economic and environmental impacts, are expected to meet, or exceed, those adopted by the Board in September 2004 as early as FY 2010 such that the total timber harvest for the FY 2005-2014 planning decade will achieve the 5.97 billion board feet goal as originally adopted in September 2004. Further, it is expected that over the 64 year planning horizon, the average annual timber harvest inherent in the Agreement will equal that established in Resolution 1134.

With the additional owl protections called for in the Agreement and the ability to meet our fiduciary obligations to the trusts per Resolution 1134, this is truly a win-win situation. I am pleased to support this Agreement.”

Ms. Bergeson added that this agreement is important in building trust with the public and the parties involved. She thanked everyone for his or her hard work throughout the Sustainable Harvest process.

Mr. Anderson complimented DNR staff and Chair Sutherland's leadership. He felt that this agreement achieved the delicate balance of protecting the environment and still producing timber and utilizing the resources of the trusts. He thanked the appellants for coming to the table with a compromise that all parties could live with.

Mr. Nichols commented on the importance that the agreement includes provisions for future relationships and communication.

Chair Sutherland commented that the amount of effort and work put in by both sides of the parties is commendable.

PUBLIC COMMENT FOR ACTION ITEMS

None.

Chair Sutherland asked if there was anyone else present wishing to make comment before the Board? Seeing none, hearing none.

Meeting adjourned at 12:00 p.m.

Approved this ____ day of _____, 2006

Doug Sutherland, Commissioner of Public Lands

Bob Nichols for Governor Christine Gregoire

Bruce Bare, Dean, University of Washington

Daniel J. Bernardo, Dean, Washington State University

Terry Bergeson, Superintendent of Public Instruction

Ted Anderson, Commissioner, Skagit County

Attest:

Sasha Lange, Board Coordinator